



REPUBLIC OF KENYA

IN THE EMPLOYMENT AND LABOUR RELATIONS COURT

AT KISUMU

CAUSE NO. 43 OF 2018

VICTOR OKOTH MATINDE.....1ST CLAIMANT/APPLICANT
GRACE ADHIAMBO OTIENO.....2ND CLAIMANT/APPLICANT
ROSE ADHIAMBO ORINA.....3RD CLAIMANT/APPLICANT
DENVER OKEYO OMOLO.....4TH CLAIMANT/APPLICANT
KENNEDY ODHIAMBO ADIKO.....5TH CLAIMANT/APPLICANT
JACK OCHIENG CLAIMANT/APPLICANT.....6TH CLAIMANT/APPLICANT
ESTHER ADHIAMBO OBADO.....7TH CLAIMANT/APPLICANT
VERONICA ADHIAMBO ONDINGO.....8TH CLAIMANT/APPLICANT
MOLLY AGUMBE.....9TH CLAIMANT/APPLICANT
ROBERT APUNDA.....10TH CLAIMANT/APPLICANT

VERSUS

MIGORI COUNTY GOVERNMENT.....1ST RESPONDENT
MIGORI COUNTY PUBLIC SERVICE BOARD.....2ND RESPONDENT

RULING

1. The application dated 14/5/2020 prays for two orders in the following terms: -

- i. Spent
- ii. Spent
- iii. Spent
- iv. That in default of compliance with prayers 2 and 3 hereof the Respondents herein be cited for disobedience of lawful Court Orders and Warrants of Arrest be issued to bring them before the Honourable Court for purposes of punishment and/imprisonment.
- v. The Honourable Court be pleased to grant such further and/or other orders that may preserve and/or protect the rights and/or interests of the claimants/applicants herein.
- vi. Costs of this application be borne by the Respondent.

vii. Such further and/or other orders be made as the Court may deem fit and expedient.

2. The application is premised on grounds set out on the face of the Notice of Motion marked 1 to 8 the gravamen of which is that the claimants have refused to sign defective contracts and the respondents have threatened to remove the applicants from the payroll. That the respondents were served with Court Orders dated 1/10/2018 which directed them to maintain the status quo pending the hearing and determination of the suit filed by the claimants.

3. The respondents filed a replying affidavit sworn to by Christopher Rusana the County Secretary for the 1st and 2nd respondents on 16/6/2020.

4. The deponent admits in the affidavit that on 20/9/2018, the Court issued an order directing that the claimants continue to be employed by the Respondents pending the determination of the suit. That the status quo order is clear that the claimants shall be employed in their present capacities or as otherwise determined by the Respondent.

5. That the status quo as at the time of issuance of the Court Order was that the claimants were employed on monthly renewable contracts. That the respondents have continued to employ and retain the services of the claimants to date on similar terms as appertained prior to the issues of the contacts

6. That the application is misconceived and meant to delay hearing of the suit.

7. That it be dismissed with costs.

8. The applicants joined issue with the respondents in the supplementary affidavits sworn to by the 1st claimant on 9/6/2020 in which he admits that the applicants have been absorbed by the respondents, under fixed term contracts of 3 months with effect from 1/7/2019 to 31/9/2019, 1/10/2019 to 31/12/2019.

9. That on 15/5/2020 the Court issued conservatory interim orders directing the 1st and 2nd respondents to pay the salary of the claimants and not remove them from the payroll.

10. That the Service Contracts for extension of service dated 29/2/2020 are defective and claimants have refused to sign them. That status quo be maintained until the suit is heard and determined.

11. The Court in its ruling dated 20/9/2018 dealt with all interlocutory issues by directing

(i) The prevailing status quo as between the claimants/Applicants and the respondents be maintained pending the hearing and determination of the suit.

(ii) For the avoidance of doubt, the claimants/Applicants continue to be employed and provide services to the Respondents in their present capacities or as otherwise determined by the Respondents until the dispute is resolved on the merits.

12. The present application was granted in terms of prayers 1, 2 and 3 to re-emphasize the directives of the Court.

13. However, the dispute that need to be resolved on a priority basis is whether the respondents have violated the Applicants/claimants right to fair Labour practice by employing them as casual workers for over 4 years.

14. This question to be resolved include whether the practice by employers to continue using 3 months' contracts to keep employees for prolonged period of time, and over 4 years in this case does also constitute unfair labour practice due to the continuous difficulties it places that category of employees in.

15. The Respondent is under obligation to preserve the status as directed by the Court on 20/9/2018 and restated in the interim orders issued on 14/3/2020 which order is simply a restatement of the status quo as per the directive of the Court on 20/9/2018.

16. The parties do continue to observe the status quo including the claimants signing the three (3) months contracts which they had earlier worked under before the Court directives were issued.

17. In the final analysis both parties maintain the status quo as stated herein and the suit be set down for hearing and determination of the single issue whether the Respondents have violated the right to fair Labour practice of the claimants/Applicants.

18. Costs in the cause.

DATED AND DELIVERED AT NAIROBI THIS 11TH DAY OF MARCH, 2021.

MATHEWS N. NDUMA

JUDGE

ORDER

In view of the declaration of measures restricting court of operations due to the COVID-19 pandemic and in light of the directions issued by his Lordship, the Chief Justice on 15th March 2020, this ruling has been delivered to the parties online with their consent. They have waived compliance with **Order 21 rule 1 of the Civil Procedure Rules** which requires that all judgments and rulings be pronounced in open court. In permitting this course, this court has been guided by **Article 159(2)(d)** of the Constitution which requires the court to eschew undue technicalities in delivering justice, the right of access to justice guaranteed to every person under **Article 48** of the Constitution and the provisions of **Section 18 of the Civil Procedure Act (chapter 21 of the Laws of Kenya)** which impose on this court the duty of the court, *inter alia*, to use suitable technology to enhance the overriding objective which is to facilitate just, expeditious, proportionate and affordable resolution of civil disputes.

MATHEWS N. NDUMA

JUDGE

Appearances

Claimants/Applicants in person

M/s Muga Muga Associates Advocates for the Respondent.

Chrispo: Court clerk.